



# Australian Government

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## Parks Australia

### Offshore Petroleum Guideline: Prior Usage Rights

In relation to the *Environment Protection and Biodiversity Conservation Act 1999* and *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

This document has been developed as a general guide only. It is subject to, and does not replace or amend the requirements of the [Environment Protection and Biodiversity Conservation Act 1999](#) and the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) and associated Regulations, which should be read in conjunction with this guideline.

This guideline is made available by the Australian Government for information only. Before relying on this material, users should carefully evaluate the accuracy, currency, completeness and relevance of the information and obtain independent, legal or other professional advice relevant to their particular circumstances.

This document has been prepared by the Director of National Parks and the Australian Government Department of Industry, Innovation and Science. It will be reviewed and updated as required.

This document is available online at [www.nopta.gov.au/forms/forms.html](http://www.nopta.gov.au/forms/forms.html) and [www.environment.gov.au/resource/renewal-or-extension-prior-usage-rights-mining-and-oil-and-gas-activities](http://www.environment.gov.au/resource/renewal-or-extension-prior-usage-rights-mining-and-oil-and-gas-activities)

## Table of Contents

1. What is a 'Prior Usage Right' .....	3
Overview.....	3
2. Seeking consent under EPBC s 359(3) .....	3
Overview.....	3
How to apply.....	4
Criteria for assessment .....	4
Conditions.....	4
Refusal of Consent .....	5
3. Ceasing to be a prior usage right.....	5
4. Questions.....	5
 Appendix A.....	6
Process Diagram.....	6

## 1. WHAT IS A 'PRIOR USAGE RIGHT'

[Environment Protection and Biodiversity Conservation Act 1999](#) (EPBC Act) section 359

### Overview

- A petroleum title granted under the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) (OPGGS Act) is a 'prior usage right' for the purposes of the EPBC Act if the petroleum title was in force immediately before the proclamation of a Commonwealth marine reserve that overlaps the title area. Each type of OPGGS Act title (e.g. Petroleum Exploration Permit, Retention Lease, Production Licence) is a separate usage right under the EPBC Act.
- Petroleum titles may be prior usage rights in relation to the following Commonwealth marine reserve Proclamations:
  - Proclamation of the South-east Commonwealth Marine Reserve Network in June 2007; and
  - Proclamation of the South-west, North-west, North and Temperate East Commonwealth Marine Reserve Networks, and the Coral Commonwealth Marine Reserve, in December 2013.
- Titles that are prior usage rights are exempt from having to comply with provisions of the EPBC Act and the [Environment Protection and Biodiversity Conservation Regulations 2025](#) (the Regulations) that relate to a Commonwealth marine reserve, or the management plan for the reserve. All other provisions of the EPBC Act and the OPGGS Act and the Regulations remain applicable.
- Subsection 359(3) of the EPBC Act provides that a prior usage right may be renewed, or have its term extended, only with the Minister for the Environment's written consent, and subject to any conditions determined by the Minister.
- For the purposes of this guideline, a 'renewal' means an application made under section 119 or 153 of the OPGGS Act. An 'extension' means an application made under section 265 of the OPGGS Act.

## 2. SEEKING CONSENT UNDER EPBC S 359(3)

### Overview

- A prior usage right titleholder can apply to the Minister for the Environment (or the Minister's delegate) for consent to renew or extend the title term at the same time as applying to NOPTA. Note: Consent of the Minister for the Environment is not required under the EPBC Act for suspension or variation of title conditions, exemption from the requirement to comply with any of the title conditions or surrender of the title under the OPGGS Act.
- The guidance in this section should be read in association with sections 2 and 3 of the 'Offshore Petroleum Exploration Guideline: Work-bid'.
- After the consent of the Minister for the Environment is obtained, the relevant Offshore Petroleum Joint Authority can make its decision under the OPGGS Act.
- The EPBC Act provides that the Minister for the Environment may impose conditions as part of the consent to renew or extend the term of the title.

- A diagram depicting the process is available at **Appendix A**.
- It is expected that a response to the consent application will generally be provided within four weeks of receiving a complete application.
- The process for seeking consent can be carried on concurrently with the relevant Joint Authority's consideration of an application. Obtaining consent is not expected to increase the timeframes for decision making as outlined in the 'Operating Protocols for Offshore Petroleum Joint Authorities and Supporting Institutions'.

### **How to apply**

- 2.1. An application form is available online at NOPTA's website and the Department of the Environment website.
- 2.2. The application should be submitted to the Director of National Parks (Parks Australia) at [MarineReserves@environment.gov.au](mailto:MarineReserves@environment.gov.au) and copied to NOPTA at [titles@nopta.gov.au](mailto:titles@nopta.gov.au)
- 2.3. Applications are assessed by Parks Australia as the management authority and delegate to the Minister for the Environment for Commonwealth marine reserves.
- 2.4. Parks Australia may clarify any aspect of the application through a written request for further information to the applicant.

### **Criteria for assessment**

- 2.5. The EPBC Act does not specify the matters that may be taken into account by the Minister for the Environment, but matters considered relevant will include:
  - a) That all prior usage right titles are in zones which allow oil and gas activities.
  - b) The past performance of the applicant in relation to environmental incidents within Australia; and
  - c) Activities allowed under the OPGGS Act for the title.

Note: Information required on the application form concerning activities which the titleholder currently expects to be undertaken during the renewal or extension period will provide context to inform the decision of the Minister for the Environment. A titleholder will not be restricted to undertaking these activities during the remainder of the permit term, and the Minister's consent will be given for an extension/renewal of the title term on the basis that all activities allowable under the OPGGS Act and the EPBC Act may be undertaken (subject to any conditions imposed by the Minister).

### **Conditions**

- 2.6. The Minister for the Environment may impose conditions for the protection of the values of a Commonwealth marine reserve from unacceptable impacts.
- 2.7. Any condition/s would be decided on a case-by-case basis taking into account the particular title and the reserve zones it overlaps.
- 2.8. If the Minister is considering imposing any conditions, Parks Australia will consult the titleholder prior to the Minister making his/her decision.
- 2.9. Any condition will be communicated in writing with the Minister's consent.

- 2.10. If a titleholder does not comply with a condition, the Minister may take action under section 475 of the EPBC Act to require the titleholder either to comply with the condition(s) or to cease operations that are contrary to the condition(s).

### **Refusal of Consent**

- 2.11. If the Minister for the Environment is considering not giving consent, Parks Australia will consult the titleholder prior to the Minister making his/her decision.
- 2.12. In the event that the Minister does not consent, the relevant Offshore Petroleum Joint Authority has no choice but to refuse the application for extension or renewal under the OPGGS Act.
- 2.13. Similarly, if the titleholder elects not to apply for consent of the Minister for the Environment, the relevant Offshore Petroleum Joint Authority cannot finalise an application for extension or renewal.
- 2.14. If an application for consent is not submitted within a reasonable timeframe, the Joint Authority may seek to resolve the matter in consultation with the titleholder.
- 2.15. The consent of the Minister for the Environment is not required for applications for suspension or variation of title conditions, exemption from title conditions or surrender of a title.

## **3. CEASING TO BE A PRIOR USAGE RIGHT**

- 3.1. Each type of title under the OPGGS Act is a separate usage right for the purposes of the EPBC Act. Accordingly, a prior usage title continues to be a prior usage right until it either
- a) progresses to the next title type, e.g. from an exploration permit to a retention lease, or
  - b) all blocks overlapping a Commonwealth marine reserve are relinquished/surrendered.
- 3.2. If a title is progressed to the next title type, the next title will not be a prior usage right. If the next title still overlaps a Commonwealth marine reserve, all relevant provisions of the EPBC Act and Regulations, and any management plans in operation for the reserve, must be complied with.

## **4. QUESTIONS**

- Any questions about this guideline or requirements of the EPBC Act should be directed in the first instance to:  
  
Marine Protected Areas Branch  
Parks Australia  
Email: [MarineReserves@environment.gov.au](mailto:MarineReserves@environment.gov.au)
- Parks Australia will seek to respond to questions regarding this guideline or requirements of the EPBC Act within 24 hours.

Process Diagram

